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SUBJECT: GERMAN COURT REJECTS SCIENTOLOGY APPEAL AGAINST  
SURVEILLANCE

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11. (U) Summary: The Higher Administrative Court in Muenster rejected an appeal by the Church of Scientology (COS) of Germany February 12 to end surveillance of the Church by the Federal Office for the Protection of the Constitution (OPC). The court found that COS maintained "ambitions against Germany's free and democratic basic order," thus justifying continued surveillance, including via intelligence means. The court did not rule as to whether COS is a religion, arguing that this issue was not relevant for the decision at hand. The decision confirmed the Federal Government's position on this matter and represents a major setback in COS Germany's long-standing legal campaign against OPC surveillance and for recognition as a church. End Summary.

12. (U) The Muenster Court decision is part of an ongoing legal battle that goes back to a 2003 joint suit by COS Germany and COS Berlin against the Federal Republic of Germany in connection with the surveillance of COS by the federal OPC. Since the OPC is headquartered in Cologne, courts in North Rhine-Westphalia (NRW) have jurisdiction over the case. The Cologne Administrative Court rejected the initial petition of COS in November 2004, finding that the OPC monitoring was legal. COS appealed the decision to the Higher Administrative Court in Muenster, where the case had been pending for the last three years. This report is based on the observations and conversations of Duesseldorf Pol/Econ Specialist, who attended the hearing.

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Scientology Claims Discrimination and Violation of Religious  
Freedom  
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13. (U) During the February 12 five-hour court hearing, COS lawyers built their case around two main legal arguments: that COS has been the victim of government discrimination and that the government actions have violated COS' right to religious freedom pursuant to Article 4 of the German constitution. The court appeared to be unimpressed by these arguments, focusing instead on certain statements made by Scientology founder L. Ron Hubbard which the court characterized as extremist and relevant for COS operations today. COS lawyers tried to play down these statements, likening them to certain passages in the Old Testament which, they argued, also had no relevance for Christian churches today. OPC legal counsel refuted this argument, however, quoting Scientology documents that they asserted demonstrates the direct relevance of Hubbard's teachings and statements to COS's current activities.

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¶4. (U) Michael Bertrams, the presiding judge of the five-member panel, presented the main grounds for the decision in a brief oral statement. (The full written text of the decision will not be available for several weeks.) Bertrams argued that there are concrete indications that the COS and its members are engaged in "efforts directed against (Germany's) free and democratic basic order." He asserted Scientology is striving to establish a social order in which "central constitutional principles such as human dignity and the right to equal treatment are to be repealed or restricted." In particular, he said, there is "suspicion that in a Scientological society only Scientologists could have civil rights." (NOTE: Bertrams is the most senior, and many maintain most respected, judge in NRW, as he is the longtime President of the Higher Administrative Court in Muenster and is also President of the NRW Constitutional Court, where he is Chief Justice. END NOTE.)

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Court does not Address Claim of Religion -- COS Announces Appeal  
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¶5. (U) Bertrams further asserted that given its findings and because Scientology is currently expanding its activities in Germany, the continuation of OPC surveillance of COS is "justified, including surveillance by intelligence means" (i.e. through the use of undercover agents and eavesdropping devices). He also noted that the court had intentionally left open the question of whether COS is a religious community, arguing that this issue is not relevant for its decision. Finally, the court ruled that the COS may appeal the decision only on procedural grounds and not on the merits of the case. This limited appeal would be handled by the Federal Administrative Court (FAC) in Leipzig; Scientology has announced it will do so.

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Comment  
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¶6. (SBU) The February 12 decision constitutes the highest court ruling to date in Germany on the matter of OPC surveillance of Scientology. In the past, COS Germany had partial successes at lower administrative court level in Saarlouis and Berlin in cases that involved monitoring by state-level OPCs. In its efforts to end surveillance at the national level by the Federal OPC, however, COS Germany has suffered a major setback. The German Federal Government and certain state governments will likely view this decision as a confirmation of their position on the need for continued OPC monitoring. The fact that the court did not consider the issue of whether or not COS constitutes a religion indicates that the COS lawyers' strategy of building their case primarily on this argument was unsuccessful. It remains to be seen whether COS will pursue what some observers believe may be a promising legal course of action by filing a petition with the Federal Constitutional Court in Karlsruhe.

¶7. (U) This message was coordinated with Embassy Berlin.  
BOYSE